Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No.745 of 2001

1. Smt. Prema Devi W/o Late Chandra Dutt Raturi
2. Rakesh S/o Late Chandra Dutt Raturi
3. Rajesh Late Chandra Dutt Raturi
   aged about 17 years
4. Kumar Rajeshwar D/o Late Chandra Dutt Raturi, aged 17 years.

Serial No.3 and 4 are under the guardianship of their mother Smt. Prema Devi S/o Late Chandra Dutt Raturi. All residents of Village-Dhiyan Badethi Patti- Bisth Tehsil-Dunda District-Uttarkashi.

……Claimants/Appellants

Versus

1. The New India Assurance Company Ltd.,
   Branch Office Hotel Hill Queen, the Mall Road, Mussorie.
2. Shri Bhaskaranand Gairola S/o Shri S.M. Gairola, R/o Deep Nagar, Ajapur Kala, P.S. Dalanwala, District-Dehradun
3. Shri Ganesh Kothiyal, S/o Jagdish Kothiyal, R/o Pipalmundi, Chinyalisaur, Tehsil Dunda District-Uttarkashi

……Opp. Parties/Respondents

Date: October 13, 2004

Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the appellant against the judgment and award dated 26.02.2001 passed by Shri Jai Prakash Narain, District Judge/Motor Accident Claims Tribunal, Uttarkashi in Motor Accident Claims Case No.8 of 1997, whereby the Tribunal has rejected the claim petition of the appellants. The relief claimed by this appeal by the Appellants is to allow the appeal and quash the impugned judgment and award of the Court below and award the compensation to the claimants with interest @ 18% mainly on the grounds that the findings of the learned Tribunal is erroneous in law that Chandra Dutt Raturi was owner of the vehicle and the owner of

the Truck was unable to produce any documents regarding transfer of the truck in the name of the deceased and the Tribunal wrongly feel into error that the accident did not occur due to rash and negligence driving of driver of offending vehicle.

Brief facts giving rise to this appeal are that on 01.12.1996, Shri Chandra Dutt Raturi (***the deceased***) was coming back from Banchaura Motor Road by Truck No.UP-07E-5377 after supplying the vegetables there. But due to the rash and negligent driving of its driver, the truck fell into a Khud as a result of which Shri Chandra Dutt Raturi died on the spot. according to the appellants/claimants, the deceased was the owner of the goods at the relevant time of accident. The deceased hired the truck No.UP07-E-5377 from Respondent No.2 Shri Bhaskara Nand, the owner of the Trick for supplying the agriculture product. The Truck was insured with O.P. No.3, The New India Assurance Company Ltd. The deceased was earning Rs.10,000/- by way of supply of vegetables and business and after his death his children have become orphaned. The deceased was –43- years of age at the time of the accident. The claimants have submitted that if the deceased would have been alive, then he would have served the family for next about –27- years. The claimants have submitted the claim for compensation for Rs.24,10,000/- be awarded.

The Respondent No.1/O.P. No.1, Insurance Company has submitted in his written statement that it is not right that the deceased was earning Rs.10,000/- per month and he was aged about –43- years at the time of accident. The truck was being used in

violation of the guidelines of the insurance policy, hence the insurance company is not liable to pay any compensation. The O.P. No.1 has also challenged the fitness, registration and driving licence.

The Respondent No.2/O.P. No.2 has submitted in its written statement that he has no information about the business of the deceased. He further denied about any information about the driving the truck at the time of the accident. He further stated in his written statement that he got the Truck Insured by New India Assurance Company, Mussorrie and has also given the insurance policy number in his reply.

The Respondent No.3/O.P. No.3 has submitted in its written statement that the Truck did not fell into Khud due to his rash and negligent driving. The deceased was in the business of good loading and due to some technical failure, the truck fell into Khud.

The Tribunal, on the pleadings of the parties, framed the following necessary issues: -

1. Whether the accident occurred by Truck No.UP-07 E-5377 due to the rash and negligent driving of its driver resulting into the death of Shri Chandra Dutt Raturi?
2. Whether the O.P. No.3, insurance company is not liable to pay any compensation?
3. Whether the claimants are entitled to receive any compensation? If yes, then how much and from whom?
4. Whether the truck UP-07 E-5377 was being driven in violation of the insurance policy guidelines as stated by O.P. No.3, insurance company, if yes then its effect?

5. Whether the disputed vehicle was being driven without any valid driving licence, if yes then its effect?

While deciding Issue No.1, the Tribunal come to the conclusion that the accident did not occur due to the rash and negligent driving of its driver, even the accident occurred due to some technical failure.

The Tribunal while deciding Issue No.3 and 4, come to the conclusion that the Truck was being driven in violation of the insurance policy guidelines. The Tribunal also found that the wife of the deceased accepted that her husband (***the deceased***) did not get the insurance of the truck in his name and as such it was stated that truck was being driven in violation of the insurance policy guidelines. Further more, the truck was also driven without insurance and the insurance was also not transferred, hence the Tribunal come to the conclusion that Insurance Company is not liable to pay any compensation.

The Tribunal decided all the issues on the basis of evidence on record and held that the offending Truck was not being driven by its driver rashly and negligently. The accident had occurred due to the mechanical failure and it was also held by the Tribunal that the deceased was the owner himself of the Truck and Truck was not insured by the deceased with the Insurance Company, hence the claimants are not entitled for any compensation.

We have heard Shri Narayan Singh Negi, learned counsel for the Appellants and Shri R.B. Agarwal, learned counsel for O.P. No.1, the New India Assurance Company and have carefully

gone through the material on record including the impugned judgment and award.

The learned counsel for the appellant contended that the Tribunal has rejected the claim of the appellants and held that accident took place due to technical failure and not due to rash and negligent driving of the driver of the offending Truck. The learned counsel for the appellants further submitted that in Motor Accident Claim Case No.1 of 1997, (Smt. Anita Vs. The New India Assurance) and Motor Accident Claim Case No.5 of 1997 (Smt. Muni Devi Vs. The New India Assurance Company Ltd.) regarding the same accident, the Motor Accident Claims Tribunal not relied upon the statement of driver and held that the accident took place due to rash and negligent driving of the driver. In these aforesaid Motor Accident Claim cases No.1 of 1997 and case No.5 of 1997 held that deceased Chandra Dutt Raturi died in the said accident and not the truck owner Bhaskaranand. The Motor Accident Claims Tribunal further held that in other Motor Accident Claims cases that Shri Bhaskaranad is the owner of the truck and his father given Affidavit before the Court of the Chief Judicial Magistrate, Uttarkashi that his son Bhaskaranad is the owner of the offending truck and it may be released in his favour. The Tribunal further held in the aforesaid cases that deceased Shri Chandra Dutt Raturi cannot be admitted as owner of the offending truck, which is evident on record and further held that Shri Bhaskaranand was the owner of the truck. It is undisputed that the aforesaid truck by which accident took place was insured with the New India Assurance Company.

The claimants filed the certified copy of the judgment of Motor Accident Claim Case No.1 of 1997 and case No.5 of 1997 in their Rejoinder Affidavit filed in the appeal.

On perusal of the record, we find that the learned Tribunal in Motor Accident Claim Case No.1 of 1997 and case No.5 of 1997 allowed the compensation to the claimants. The record also reveals that these cases are related with the same accident. We find force to the contention of the learned counsel for appellants. The learned Tribunal has erred in not appreciating the evidence adduced by the claimants in these aforesaid motor accident claim cases.

We are of the opinion that the case should be remanded to the learned Tribunal for decision afresh in the light of the evidence adduced in Motor Accident Claim Case No.1 of 1997 and Motor Accident Claim Case No.5 of 1997.

The appeal is allowed. The case is remanded back to the learned Tribunal for decision afresh accordingly.

(B.S. Verma, J.) **(P.C. Verma, J.)**

Rajeev Dang